

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND**

DAN DIAMANT, Plaintiff

vs.

CA No. 17- cv548 JJM-PAS

**UTGR, Inc. dba Twin River Casino,
Et al.**

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS

Now comes the Plaintiff, by and through counsel, and proposes the following jury instructions.

/S/ Thomas G. Briody
Thomas G. Briody, Esq. #4427
Law Office of Thomas G. Briody
128 Dorrance Street
Suite 550
Providence, RI 02903
Telephone: (401) 751-5151
Facsimile: (401) 421-0876

CERTIFICATION

The undersigned certifies that a true copy of these proposed jury instruction were served via electronic mail and via ECF Paul R. Crowell, Engleberg and Bratcher, 100 High Street, Boston, MA 02110, Brenda Baum, Rhode Island Department of Attorney General, 150 S. Main Street, Providence, RI 02903, and Marc DeSisto, 60 Ship Street, Providence, RI 02903 on this 20th of November, 2020.

/s/ Thomas G. Briody

NATURE OF PLAINTIFF'S CLAIM

THE PLAINTIFF, DAN DIAMANT, ALLEGES THAT THE DEFENDANTS UNLAWFULLY DETAINED HIM AND FORCED HIM TO PRODUCE IDENTIFICATION WITHOUT ANY LEGAL JUSTIFICATION. IN DOING SO, THE DEFENDANTS VIOLATED HIS CIVIL RIGHTS TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE IN VIOLATION OF SECTION 1983, TITLE 42 OF THE UNITED STATES CODE.

THE PLAINTIFF FURTHER ALLEGES THAT THE DEFENDANTS FALSELY IMPRISONED HIM, IN VIOLATION OF RHODE ISLAND LAW.

42 U.S.C. 1983

**SECTION 1983 OF TITLE 42 THE UNITED STATES CODE PROVIDES
THAT EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE,
ORDINANCE, REGULATION, CUSTOM OR USAGE OF ANY STATE,
SUBJECTS OR CAUSES TO BE SUBJECTED, ANY PERSON WITHIN THE
JURISDICTION THEREOF TO THE DEPRIVATION OF ANY RIGHTS,
PRIVILEGES OR IMMUNITIES SECURED BY THE CONSTITUTION AND
LAWS, SHALL BE LIABLE TO THE INJURED PARTY.**

**YOU ARE INSTRUCTED AS A MATTER OF LAW THAT UNDER THE
CONSTITUTION OF THE UNITED STATES THE FOURTH AMENDMENT
GUARANTEES EVERY PERSON THE RIGHT TO BE SECURE IN HIS OR
HER PERSON AGAINST AN UNREASONABLE SEIZURE.**

Bosworth v. Minella, cv 12-509 ML (ECF 36) (D.R.I. 2013) (J. Lisi)

STOP AND IDENTIFY
IT IS UNLAWFUL FOR POLICE OFFICERS TO DETAIN SOMEONE FOR
REFUSING TO ANSWER QUESTIONS OR FOR CHALLENGING THEM.
STOPPING AN INDIVIDUAL FOR THE SOLE PURPOSE OF OBTAINING
IDENTIFICATION VIOLATES THE FOURTH AMENDMENT.

Houston v. Hill, 482 451, 461 (1987) (“the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers[.]”), Veiga v. McGee, 26 F.3d 1206, 1213 (1st Cir. 1994).

Brown v. Texas, 443 U.S. 4, 52 (1979).

FALSE IMPRISONMENT

**WHENEVER A PERSON UNLAWFULLY OBSTRUCTS OR DEPRIVES
ANOTHER OF HIS FREEDOM TO CHOOSE HIS LOCATION, FOR
HOWEVER BRIEF A PERIOD, THAT PERSON WILL BE LIABLE FOR
THAT INTERFERENCE.**

Moody v. McElroy, 513 A.2d 5, 7-8 (R.I. 1986)

**TO ESTABLISH THE INTENTIONAL TORT OF FALSE IMPRISONMENT,
MR. DIAMANT MUST SHOW THAT (1) THE DEFENDANT OR
DEFENDANTS INTENDED TO CONFINE HIM; (2) MR. DIAMANT WAS
CONSCIOUS OF THE CONFINEMENT; (3) MR. DIAMANT DID NOT
CONSENT TO THE CONFINEMENT; AND (4) THE CONFINEMENT WAS
NOT OTHERWISE PRIVILEGED.**

Id. See also Powers v. Carvalho, 117 R.I. 519, 526, 368 A.2d 1242, 1246 (1977).
**MR. DIAMANT IS NOT REQUIRED TO SHOW THAT THE DEFENDANT
OR DEFENDANTS ACTED WITH MALICE, ONLY THAT THE
CONFINEMENT WAS INTENTIONAL.**

Id.

LENGTH OF CONFINEMENT

**THE LENGTH OF THE CONFIENMENT IS NOT MATERIAL THE TORT
OF FALSE IMPRISONMENT PROVIDES A REMEDY FOR AN
IMPOSITION OF AN UNLAWFUL RESTRAINT UPON ONE'S FREEDOM
OF MOVEMENT.**

Webbier v. Thoroughbred Racing Protective Bureau, 105 R.I. 605, 613, 254 A.2d 285 (1969)

CONSENT TO CONFINEMENT

**MR. DIAMANT'S CONSENT TO THE CONFINEMENT MAY NOT BE
OBTAINED BY FORCE OR COERCION. WHERE A PERSON IS
UNLAWFULLY DETAINED BY ANOTHER AND IS FEARFUL THAT
PHYSICAL FORCE WILL BE USED UNLESS HE SUBMITS TO THE
DETENTION, HIS SUBMISSION DOES NOT BAR HIS CLAIM FOR FALSE
IMPRISONMENT.**

Berberian v. Mitchell, 131 R.I. 438, 441, 321 A.2d 431, 432 (1974), Webbier v. Thoroughbred Racing Protective Bureau, 105 R.I. 605, 613-14, 254 A.2d 285 (1969).

DAMAGES

**MR. DIAMANT MAY RECOVER COMPENSATORY DAMAGES EVEN
THOUGH HE PROVES NO ACTUAL BODILY INJURY. THIS IS BECAUSE
THE INJURY INVOLVED IN FALSE IMPRISONMENT IS IN PART A
MENTAL ONE, AND THEREFORE MR. DIAMANT IS ENTITLED TO BE
COMPENSATED FOR ANY MENTAL SUFFERING AND HUMILIATION
THAT HE EXPERIENCED.**

Webbier v. Thoroughbred Racing Protective Bureau, 105 R.I. 605, 620, 254 A.2d 285 (1969)

**IN AN ACTION FOR FALSE IMPRISONMENT, THE PLAINTIFF MAY BE
AWARDED PUNITIVE DAMAGES IN ADDITION TO COMPENSATORY
DAMAGES.**

**Soares v. Ann & Hope, Inc., 637 A.2d 339, 351 (R.I. 1994) and R.I.G.L. 12-7-14
(In an action for false imprisonment, the plaintiff, if successful, may be awarded
punitive damages in addition to compensatory damages.)**

**IF YOU FIND THAT THE DEFENDANT OR DEFENDANTS ACTED WITH
ACTUAL MALICE, RECKLESSNESS OR WANTONNESS, YOU MAY
PROPERLY AWARD PUNITIVE DAMAGES AS WELL.**

**Pimental v. Postoian, 121 R.I. 6, 12-13, 393 A.2d 1097, 1102 (1978), Sherman v.
McDermott, 114 R.I. 107, 109, 329 A.2d 195, 196 (1974).**

SPOLIATION

**IN THIS CASE, YOU HAVE HEARD EVIDENCE REGARDING
SURVEILLANCE CAMERAS AND VIDEOS EMPLOYED BY THE
DEFENDANT U.T.G.R. (“TWIN RIVER”) AND USED BY DEFENDANT
POLICE OFFICERS ANTERNI, ENOS AND FEVRIER. YOU HAVE ALSO
HEARD EVIDENCE THAT THE PLAINTIFF SOUGHT TO PRESERVE ANY
VIDEOS PERTAINING TO HIS INTERACTION WITH TWIN RIVER
SECURITY OFFICERS AND THE DEFENDANT POLICE OFFICERS, AND
THAT SUCH VIDEOS WERE DESTROYED.**

**EVIDENCE THAT IS DESTROYED IS SUBJECT TO A DOCTRINE
CALLED SPOLIATION. THE DOCTRINE OF SPOLIATION PROVIDES
THAT THE DELIBERATE OR NEGLIGENT DESTRUCTION OF
RELEVANT EVIDENCE BY A PARTY TO LITIGATION MAY GIVE RISE
TO AN INFERENCE THAT THE DESTROYED EVIDENCE WAS
UNFAVORABLE TO THAT PARTY. YOU MAY CONSIDER THIS AS PART
OF YOUR DELIBERATIONS ON THE ISSUES OF FALSE
IMPRISONMENT, AND VIOLATION OF THE PLAINTIFF’S RIGHT TO BE
FREE FROM UNREASONABLE SEARCH AND SEIZURE.**

**Mead v. Papa Razzi Restaurant, 840 A.2d 1103, 1108 (R.I. 2004) (quoting
Tancarelle v. Friendly Ice Cream Corp., 756 A.2d 744, 748 (R.I. 2000))**

BURDEN OF PROOF

THE PLAINTIFF HAS THE BURDEN OF PROVING EACH AND EVERY ELEMENT OF HIS CLAIM FOR DAMAGES BY A PREPONDERANCE OF THE EVIDENCE, WHICH IS ANOTHER WAY OF SAYING THAT THE PLAINTIFF MUST PROVE THEM BY THE GREATER WEIGHT OF THE EVIDENCE. TO PUT THIS ANOTHER WAY, YOU MUST BE SATISFIED THAT THE EVIDENCE SHOWS THAT WHAT HE IS CLAIMING IS MORE PROBABLY TRUE THAN NOT.

FV Erin Renee, LLC and Sea Harvest, Inc. v. Promet Marine Services Corporation (09-cv-340) (ECF 37) (D.R.I. 2011) (J. McConnell).

TESTIMONY OF A SINGLE WITNESS

**IN EVALUATING THE EVIDENCE IN THIS CASE, KEEP IN MIND THAT
THE TESTIMONY OF A SINGLE WITNESS, IF BELIEVED BY YOU, CAN
BE ENOUGH TO SUPPORT AN ALLEGATION BY A PARTY. PUT
ANOTHER WAY, YOU NEED NOT FIND THAT TESTIMONY MUST HAVE
ADDITIONAL PROOF, OR "CORROBORATION," IN ORDER TO FIND
THAT TESTIMONY TO BE TRUE.**

Unites States v. Meises, 645 F.3d 5, 12 (1st Cir. 2011), United States v. De La Paz-Rentas, 613 F.3d 18-24-25 (1st Cir. 2010).

**MERE PRESENCE IS SUFFICIENT TO
CREATE LIABILITY UNDER SECTION 1983**

**A POLICE OFFICER WHO FAILS TO INTERCEDE WHILE A
COLLEAGUE OR ANOTHER OFFICER DEPRIVES A VICTIM OF HIS
FOURTH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE
SEARCH AND SEIZURE WOULD, LIKE HIS COLLEAGUES, BE
RESPONSIBLE FOR SUBJECTING THE VICTIM TO A DEPRIVATION OF
HIS FOURTH AMENDMENT RIGHTS.**

Gutierrez-Rodriguez v. Cartagena, 882 F.2d 553 (1st Cir. 1989) (four police officers held liable for shooting, including one who presented evidence he was asleep at the time of the shooting, where only one officer's weapon actually caused harm to plaintiff)

See also:

United States v. Koon, 34 F.3d 14116, 1447 n.25 (9th Cir. 1994), aff'd in part, rev'd in part, Koon v. United States, 518 U.S. 81 (1996); see also Randall v. Prince George's County, Md., 302 F.3d 188, 204 (4th Cir. 2002) ("[A]n officer may be liable under section 1983, on a theory of bystander liability, if he (1) knows that a fellow officer is violating an individual's constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act.").

COMPENSATORY DAMAGES

**IF YOU FIND THAT MR. DIAMANT'S WAS FALSELY IMPRISONED, OR
THAT HIS CIVIL RIGHT TO BE FREE FROM UNREASONABLE SEARCH
AND SEIZURE HAS BEEN VIOLATED BY ANY OF THE DEFENDANTS, YOU
MUST DETERMINE THE DAMAGES HE HAS SUFFERED.**

**THE FIRST KIND OF DAMAGES YOU MUST DETERMINE IS
COMPENSATORY DAMAGES.**

**THE PURPOSE OF A COMPENSATORY DAMAGE AWARD IS TO PUT A
PLAINTIFF IN AS GOOD A POSITION AS HE WAS BEFORE THE DAMAGE
OCCURRED. MR. DIAMANT SEEKS COMPENSATORY DAMAGES FOR
THE DETENTION HE SUFFERED, THE SEIZURE OF HIS IDENTIFICATION,
AND ANY LOSS HE SUFFERED AS A RESULT OF THE SEIZURE OF THAT
IDENTIFICATION.**

**COMPENSATORY DAMAGES ARE COMPOSED OF ECONOMIC LOSS AND
MENTAL SUFFERING. TO RECOVER ECONOMIC DAMAGES, MR. RICHER
MUST PROVE SOME ECONOMIC HARM THAT HE HAS EXPERIENCED.
TO RECOVER FOR MENTAL SUFFERING, YOU MAY CONSIDER
PERSONAL HUMILIATION, AND MENTAL ANGUISH AND SUFFERING.
MENTAL SUFFERING MAY INCLUDE NERVOUSNESS, ANXIETY, WORRY,
SHOCK, HUMILIATION, EMBARRASSMENT OR INDIGNITY. WHILE IT IS**

**DIFFICULT TO MEASURE THIS IN TERMS OF MONEY, YOU MAY NOT
SPECULATE OR GUESS. ANY AWARE MUST BE BASED ON THE
EVIDENCE AND WHAT YOUR CONSIDERED JUDGMENT CONSTITUTES
FAIR AND ADEQUATE COMPENSATION FOR ANY MENTAL SUFFERING
THAT HAS BEEN PROVED. THE DETERMINATION OF WHAT AMOUNT, IF
ANY YOU AWARD IS SOLELY TO BE MADE BY YOU.**

RICHARD V. PARMALEE, ET AL. 2015- 162 M-PAS (ECF 116)

PUNITIVE DAMAGES

**IN ADDITION TO COMPENSATORY DAMAGES, THE PLAINTIFF SEEKS TO
RECOVER PUNITIVE DAMAGES FROM THE DEFENDANTS IN THIS CASE.**

**THE PURPOSE OF PUNITIVE DAMAGES IS NOT TO COMPENSATE A
PLAINTIFF, BUT RATHER TO PUNISH A WRONGDOER FOR
OUTRAGEOUS OR EXTRAORDINARY MISCONDUCT, AND TO DETER
THEM OR OTHERS FROM ENGAGING IN SIMILAR CONDUCT IN THE
FUTURE. YOU MAY DECIDE TO AWARD PUNITIVE DAMAGES IF YOU FIND
THAT A DEFENDANT'S CONDUCT WAS SHOWN TO BE MOTIVATED BY
EVIL MOTIVE OR INTENT, OR THAT IT INVOLVES RECKLESS OR
CALLOUSE INDIFFERENCE TO THE CIVIL RIGHTS OF OTHERS. YOU
MAY NOT AWARD PUNITIVE DAMAGES AGAINST A DEFENDANT UNLESS
YOU FIND, BY A PREPONDERANCE OF THE EVIDENCE, THAT A
DEFENDANT'S ACTIONS WERE MALICIOUSLY, WILLFULLY, WANTONLY
OR RECKLESSLY DONE AND ARE FOUND TO BE SO WILLFUL,
RECKLESS OR WICKED THAT THEY AMOUNT TO CRIMINALITY. AN
ACT, OR A FAILURE TO ACT, IS DONE WITH MALICE IF PROMPTED OR
ACCOMPANIED BY ILL WILL, SPITE, OR GRUDGE TOWARD A
PLAINTIFF. YOU MAY CONSIDER ALL THE EVIDENCE IN THE CASE IN
MAKING THIS DETERMINATION. AN ACT IS DONE "WILLFULLY" IF IT
IS DONE VOLUNTARILY OR INTENTIONALLY, WITH THE SPECIFIC
INTENT TO DO SOMETHING THE LAW FORBIDS, THAT IS TO SAY, WITH**

A PURPOSE EITHER TO DISOBEY OR DISREGARD THE LAW. ANY ACT OR OMISSION IS "WANTONLY" DONE IF DONE IN CALLOUS OR RECKLESS DISREGARD OF, OR INDIFFERENCE TO THE RIGHTS OF ONE OR MORE PERSONS, INCLUDING THE INJURED PERSON. "RECKLESSLY" MEANS WITH INDIFFERENCE TO CONSEQUENCES. IF A PERSON ACTS WITHOUT REGARD TO POSSIBLE CONSEQUENCES, HE MAY BE FOUND TO HAVE ACTED RECKLESSLY. INTENT ORDINARILY MAY NOT BE PROVED DIRECTLY BECAUSE THERE IS NO WAY TO DIRECTLY EXAMINE THE THOUGHTS OF ANOTHER HUMAN BEING. YOU MAY, HOWEVER, INFER A PERSON'S INTENT FROM SURROUNDING CIRCUMSTANCES. YOU MAY CONSIDER ANY STATEMENT MADE OR ACT DONE OR OMITTED BY A PERSON WHOSE INTENT IS AN ISSUE, AND ALL OTHER FACTS AND CIRCUMSTANCES WHICH INDICATE HIS STATE OF MIND. YOU MAY AWARD THE PLAINTIFF PUNITIVE DAMAGES WHETHER OR NOT YOU FIND THAT HE SUFFERED ACTUAL OR COMPENSATORY DAMAGES. THAT IS, YOU NEED NOT FIND THAT THE PLAINTIFF INCURRED AN ECONOMIC OR TANGIBLE LOSS IN ORDER TO AWARD PUNITIVE DAMAGES. IN ADDITION, AN AWARD OF NOMINAL DAMAGES OR ACTUAL DAMAGES WILL NOT PREVENT YOU FROM AWARDING PUNITIVE DAMAGES.

Shelton v. Wozny, et al. 2014 cv 313 JJM (ECF 56) (D.R.I. 2018)